

JUN 27 2006

FEDERAL ELECTION COMMISSION
999 E Street, N.W.
Washington, D.C. 20463

FEDERAL ELECTION
COMMISSION
SECRETARIAT

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FIRST GENERAL COUNSEL'S REPORT

SENSITIVE

MUR: 5639

DATE COMPLAINT FILED: January 11, 2005

DATE OF NOTIFICATION: January 14, 2005

LAST RESPONSE RECEIVED: February 28, 2005

DATE ACTIVATED: January 24, 2006

EXPIRATION OF SOL: September 24, 2009

COMPLAINANT:

Charles Bolen

RESPONDENTS:

Northeast Conservative PAC and Gianna
Splitstoser, in her official capacity as treasurer
Kristian Warner
Monty Warner

**RELEVANT STATUTES
AND REGULATIONS:**

2 U.S.C. § 441a(a)(1)(C)
2 U.S.C. § 441i(f)
2 U.S.C. § 434(a) and (b)
11 C.F.R. § 110.1(d)
11 C.F.R. § 110.1(k)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

In 2004, Monty Warner was the Republican gubernatorial candidate for the State of West Virginia, and his brother, Kristian ("Kris") Warner, was Chairman of the West Virginia Republican Party. This matter arises from a complaint alleging possible violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), in connection with the funding of yard signs that appeared in West Virginia in September 2004 reading "Bush/Warner – Paid for by the Northeast Conservative PAC." Specifically, the complaint alleges that the Northeast

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1 Conservative PAC may have received contributions and made expenditures for the signs without
2 reporting such activity to the Commission, or that someone else, including Monty and Kris
3 Warner, may have funded the signs and improperly attributed them to the PAC. The PAC was
4 registered with the Commission until December 9, 2004, when it was administratively
5 terminated.

6 As discussed in more detail below, this Office recommends that the Commission find no
7 reason to believe that Monty Warner or Kris Warner violated the Act in connection with the
8 allegations in MUR 5639. This Office further recommends that the Commission find reason to
9 believe the Northeast Conservative PAC violated the Act by failing to file and for failing to
10 report contributions and disbursements related to the "Bush/Warner" yard signs, but take no
11 further action and send an admonishment letter. Finally, we recommend that the Commission
12 close the file in this matter.

13 **II. FACTS**

14 The yard signs in question appeared in September of 2004, and reportedly read only
15 "Bush/Warner," with a disclaimer reading: "Paid for by the Northeast Conservative PAC."
16 Complaint at 1; *see also* Scott Finn, *Kris Warner Got Yard Sign E-Mail State GOP Chairman*
17 *Denies Involvement With Bush-Warner Placards*, THE CHARLESTON GAZETTE, December 21,
18 2004 (attached to complaint), at A1.¹

19 The Northeast Conservative PAC, a non-party, non-qualified committee, filed a
20 Statement of Organization with the Commission in December 2001, listing an address in
21 Washington, D.C. News reports stated that the PAC's Washington, D.C. address was identical to

¹ Information about the signs appears in descriptions in the complaint and in news accounts. No photographs of the yard signs have been provided, and there is no information as to the number of signs created or distributed. We also were not able to locate any public information concerning the size or design of either the sign or disclaimer.

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1 the former address of Sam Pimm, Deputy Campaign Manager for Monty Warner, *see* complaint
2 at 1, and that the PAC's treasurer, Gianna Splitstoser, is Pimm's ex-girlfriend. *See* Scott Finn,
3 *Warner Campaign Director to Sue Party Chief*, THE CHARLESTON GAZETTE, December 28,
4 2004, at A1. Neither the PAC nor its treasurer submitted a response to the complaint.

5 During the 2004 election cycle, the PAC filed only one report, the 2003 Mid-Year, and
6 disclosed no activity. After sending five "non-filer" notices to the PAC during the 2004 election
7 cycle, the Commission administratively terminated the PAC with a letter sent on December 9,
8 2004, prior to the filing of the complaint in this matter.

9 In response to the complaint, Kris Warner acknowledges that he and his wife contributed
10 \$7,002.28 to the Northeast Conservative PAC in late September 2004. *See* Kris Warner
11 Response at 3; *see also* Finn, *supra*, *Yard Sign E-mail*, at A1. Specifically, Kris Warner states
12 that he wrote a \$4,000 check to the PAC from the joint checking account he shares with his wife,
13 and he also endorsed to the PAC a check for \$3,002.28, which he received from Monty Warner's
14 gubernatorial campaign for "reimbursement of expenses." Kris Warner also states that he left
15 both checks for Sam Pimm, the Deputy Campaign Manager for Monty Warner, with instructions
16 for the PAC to credit him with a \$5,000 total contribution and his wife with a \$2,028.28
17 contribution. Kris Warner Response at 2. Copies of both cancelled checks appear to verify that
18 the PAC deposited them into the same bank account. *See* Kris Warner Response, Attachments A
19 and B.

20 In his response, Kris Warner does not deny involvement with the creation, funding, or
21 distribution of the unlawful signs, and according to a news account, he eventually "admitted that
22 he and other family members funded the signs through contributions to the Northeast
23 Conservative PAC." Kris Warner's brother Mac and their father, George "Brud" Warner,

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1 reportedly also wrote checks to the PAC in the amounts of \$2,000 and \$1,000, respectively. *See*
2 Scott Finn, *Warner Investigation Sought GOP Chairman Sent Check From Brother's Campaign*
3 *to PAC*, THE CHARLESTON GAZETTE, January 7, 2005, at A1.

4 For his part, Monty Warner denies playing any part in the creation or production of the
5 yard signs. His short response states that he "had no involvement or role whatsoever in the
6 planning, coordination, or production of the Bush/Warner campaign signs" and that "in no way
7 did [he] authorize the production of these signs." Monty Warner Response at 1.²

8 **III. LEGAL ANALYSIS**

9 **A. Neither Monty Warner Nor His Campaign Appears to Have Violated the Act**

10 We turn first to the possibility that Monty Warner authorized his campaign to give Kris
11 Warner \$3,002.28 in the guise of a reimbursement check that was intended to be used to pay in
12 part for the Bush/Warner yard signs. If he had, this might have implicated 2 U.S.C. § 441i(f),
13 which provides that State candidates or their agents may not spend funds on communications that
14 qualify as Federal election activities "unless the funds are subject to the limitations, prohibitions,
15 and reporting requirements of the Act."³ The available information, however, does not point
16 toward payments from Monty Warner's campaign for the purpose of funding the yard signs.

17 As noted, Monty Warner denies any involvement with the "planning, coordination, or
18 production" of the yard signs, and he also denies having authorized their production. *See* Monty

² There is no allegation that the Bush campaign was in any way involved in the production or distribution of the signs. To the contrary, the Bush-Cheney campaign reportedly sent Monty Warner a "cease and desist order," citing federal law violations implicated by the signs. *See Campaign Briefs*, THE CHARLESTON GAZETTE, October 22, 2004 (attached to complaint), at A3; *see also* Finn, *supra*, at A1.

³ Federal election activities include "a public communication that refers to a clearly identified candidate for Federal office" and "promotes or supports a candidate for that office." 2 U.S.C. § 431(20)(A)(iii). Yard signs are not specifically mentioned in the definition of public communication at 11 C.F.R. §100.26 or §110.11(a), but appear to be included in "any other form of general political advertising" referenced in section 100.26. This conclusion is supported by the Commission's reference to "signs" in a listing of printed public communications in 11 C.F.R. § 110.11(c)(2)(ii).

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1 Warner Response at 1. We have no evidence to the contrary. The only money linked to both
2 Monty Warner and the signs is in the form of a \$3,002.28 check from Monty Warner's campaign
3 committee made out to Kris Warner, which Kris Warner then endorsed to the PAC. Kris
4 Warner's response states that the \$3,002.28 check was for reimbursement for expenses he paid
5 on behalf of his brother's campaign, and provides an expense report and documentation in
6 support of that claim. *See Attachments to Kris Warner Response.* These materials appear to
7 corroborate that the expense check was intended to reimburse *bona fide* expenses paid by Kris
8 Warner on behalf of the campaign for items such as stamps, copies, coffee, helium and sign
9 posts. Thus, the \$3,002.28 that Kris Warner gave to the PAC appears to have been from his
10 personal funds. We recommend, therefore, that the Commission find no reason to believe Monty
11 Warner violated the Act or the Commission's regulations with respect to the allegations in MUR
12 5639.

13 **B. Kris Warner Did Not Make An Excessive Contribution**

14 Kris Warner has admitted that he forwarded approximately \$7,000 in funds through an
15 intermediary to the Northeast Conservative PAC, which included \$4,000 by check from a joint
16 checking account with his wife and a \$3,002.28 check to him, which he endorsed to the PAC. In
17 2004, individuals could make contributions to "any other political committee" in amounts up to
18 \$5,000 per calendar year. 2 U.S.C. § 441a(a)(1)(C); 11 C.F.R. § 110.1(d). If the \$7,000 were
19 attributed to Kris Warner alone, his contribution would have been excessive. According to
20 11 C.F.R. § 110.1(k)(1) and (2), a joint contribution is to be signed by both individuals,
21 whereupon, unless indicated otherwise, it is attributed in equal parts to each. The check for
22 \$4,000 from the Warners' joint account was, however, signed only by Kris Warner. *See Kris*
23 *Warner Response, Attachment A.* The regulations, however, provide for an alternative method

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1 for attribution of contributions. Pursuant to 11 C.F.R. § 110.1(k)(3)(ii)(B)(1), if an excessive
2 contribution is made with a written instrument, such as a check, with more than one person's
3 name imprinted on it, but only one signature, the excessive portion may be attributed to the other
4 person listed, as long as such apportionment does not cause either individual to exceed the
5 contribution limitations, and they have not listed a different instruction on the instrument or in a
6 separate signed writing.

7 In this matter, the \$3,002.28 check made out to Kris Warner by the Monty Warner
8 campaign and signed over to the PAC would be a contribution to the PAC from Kris Warner
9 alone. The second check for \$4,000 was drawn on Kris Warner's and his wife's joint account,
10 and both their names are imprinted upon it. *See* Kris Warner Response, Attachment A. Kris
11 Warner's response states that the checks "were left by Mr. Warner for Sam Pimm to forward to
12 the PAC, with the instructions that Mr. Warner be credited with a \$5,000 contribution . . . and
13 that his wife be credited with a contribution of the remainder of the [joint] check." Kris Warner
14 Response at 2. If these instructions were followed, Kris Warner would be credited with a
15 contribution of \$5,000 (\$3,002.28 + 1,997.72), and his wife with a contribution of \$2,002.28.⁴
16 We do not know whether these instructions were written or signed by either Kris Warner or his
17 wife, but if they were not, 11 C.F.R. § 110.1(k)(3)(ii)(B)(1), discussed above, by default, allows
18 apportionment to be made from their joint account check to avoid an excessive contribution.
19 Thus, in either case, no excessive contribution would be attributed to Kris Warner. There are no
20 other reported contributions from Kris Warner to any other political committee or the
21 Bush/Cheney campaign in the 2004 election cycle. We recommend, therefore, that the

⁴ The response states that the amounts attributed to Kris and Joyce Warner would be \$1,897.72 and \$2,028.28, respectively, apparently due to a miscalculation and typographical error. We use the correct numbers here.

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Commission find no reason to believe Kris Warner violated the Act or the Commission's regulations with respect to the allegations in MUR 5639.⁵

C. Reporting Violations Concerning the Northeast Conservative PAC

The Act requires all political committees to file reports of their receipts and disbursements. 2 U.S.C. § 434(a)(1). Political committees other than authorized committees must report the total amount of receipts for the reporting period and calendar year, and identify each person who makes contributions to it aggregating in excess of \$200 within the calendar year, together with the date and amount of any such contribution. They must also report the total amount of all disbursements in the reporting period and calendar year and the full name and address of each person to whom a disbursement of over \$200 is made within the calendar year, together with the date, amount and purpose of such disbursement. 2 U.S.C. § 434(b)(4); 11 C.F.R. § 104.3(a)(4)(i) and (b)(3)(i).

As discussed above, it appears that prior to its termination, the PAC received up to \$10,000 from the Warner family during 2004, some or all of which it expended on the yard signs in question. Assuming the PAC spent all of the \$10,000 on the yard signs, since there is no evidence that the PAC keeps separate Federal and non-Federal accounts, it should have reported \$10,000 to the Commission as both a receipt and a disbursement. Not only were these amounts not reported, but the PAC failed to file any reports for the covered period, just as it had for several previous reporting periods prior to its termination. We recommend, therefore, that the

⁵ A news article reported that a "former contract employee" for the state GOP sent Kris Warner an e-mail with a proposed design for the sign, but Warner stated that any state GOP workers "were doing the design work outside their jobs for the Republicans." See Finn, *Yard Sign E-Mail*, *supra*, at A1. There is no allegation in the complaint that these individuals were compensated for their time on the yard sign project, and there is no evidence that their time was provided on anything other than a volunteer basis. For that reason, we do not address any possible violations of 2 U.S.C. § 441i(b) in this Report.

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Commission find reason to believe the Northeast Conservative PAC violated 2 U.S.C. § 434(a) and (b) of the Act.⁶

Accordingly, we recommend that the Commission take no further action as to the Northeast Conservative PAC and Gianna Splitstoser, in her official capacity as treasurer, send them an admonishment letter which references both the apparent violations and contains a warning that any additional Federal activity will void the administrative termination, and close the file.

V. RECOMMENDATIONS

1. Find no reason to believe that Monty Warner violated the Federal Election Campaign Act of 1971, as amended, or the Commission's regulations in connection with the allegations in MUR 5639.


⁶ The yard signs reportedly carried the disclaimer: "Paid for by the Northeast Conservative PAC." The Act and regulations, however, require that covered communications must include adequate disclaimers that provide information concerning whether candidates or their agents authorized the communication, and that meet other specific requirements. 2 U.S.C. § 441d(a)(2) and (3), and (c)(2); 11 C.F.R. §110.11(a)-(c). Because we have no photographs of the signs, *see* footnote 1, *supra*, and in view of our other recommendations in this Report, we make no recommendation as to a possible disclaimer violation.

2. Find no reason to believe that Kristian Warner violated the Federal Election Campaign Act of 1971, as amended, or the Commission's regulations in connection with the allegations in MUR 5639.
3. Find reason to believe that the Northeast Conservative PAC and Gianna Splitstoser, in her official capacity as treasurer, violated 2 U.S.C. § 434(a) and (b) of the Federal Election Campaign Act of 1971, as amended, take no further action, and send an admonishment letter.
4. Close the file.
5. Approve the appropriate letters.

Lawrence H. Norton
General Counsel

Lawrence L. Calvert, Jr.
Deputy Associate General Counsel
for Enforcement

BY:


Susan L. Lebeaux
Assistant General Counsel

June 27, 2006
Date

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